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**FISCAL IMPACT STATEMENT**

**LS 6238**

**BILL NUMBER:** SB 96

**NOTE PREPARED:** Mar 31, 2005

**BILL AMENDED:** Mar 24, 2005

**SUBJECT:** Bifurcated Sentencing.

**FIRST AUTHOR:** Sen. Long

**FIRST SPONSOR:** Rep. Messer

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

A. It replaces the fixed term of imprisonment for murder and other felonies with an advisory sentence to be used as a guideline sentence that a court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence that may be imposed for murder and other felonies.

B. It makes conforming amendments.

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

**Effective Date:** (Amended) Upon Passage.

**Explanation of State Expenditures:** (Revised) This bill will have an indeterminable impact on DOC facility population.

Under current law, the sentence length that courts may impose on a criminal defendant depends on a finding that either aggravating or mitigating factors exist which can either increase or decrease the sentence length from the presumptive level.

As proposed, a court would be permitted to impose any sentence that is permitted by statute and state constitution regardless of the presence or absence of aggravating circumstances. The sentence length would be required to be within the sentencing range in current statute.

The following table shows the current presumptive sentence lengths and the minimum and maximum sentence lengths that courts can currently impose. The presumptive sentence would become an advisory sentence which

would be a nonbinding guideline prison term.

Felony Class	Minimum	Presumptive	Maximum
Murder	45 years	55 years	65 years
A	20 years	30 years	50 years
B	6 years	10 years	20 years
C	2 years	4 years	8 years
D	six months	1.5 years	3 years

This change in sentencing laws would have an indeterminable effect on the state prison population. It is possible that little change would occur if sentencing courts continue to use the presumptive length as the basis of their decisions.

#### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** This bill could increase jury costs for counties. Under current law, a defendant who is determined in court to have committed a felony with aggravating circumstances or had a history of criminal activity may be sentenced to an additional term of years depending on the felony and past history without an additional hearing. For a specific felony, a defendant may receive an additional term of years if aggravating conditions were found to exist or the person had a prior criminal history. In addition, a person may receive an additional term of years because the person had been convicted of a previous unrelated crime.

As proposed, the following conditions would have to occur for a criminal defendant to be sentenced to either added years because of the nature of the felony or because of the person's previous criminal history.

- A separate hearing would have to occur to determine the circumstance of the felony or the person's criminal history.
- If a jury decided the defendant was guilty, then the jury would reconvene to hear evidence about the nature of the felony or the defendant's criminal history and decide whether aggravating circumstances existed or the defendant's criminal history would justify an additional term of years.
- If the judge presiding over the trial determined the defendant was guilty, then the presiding judge would also hear evidence about the nature of the felony or the defendant's criminal record to decide whether aggravating circumstances existed or the defendant's criminal history would justify an additional term of years.

Any added costs to the counties where these cases are held would depend on whether the defendant's hearing was tried before a jury or before a judge.

Under IC 35-37-1-1, 12 qualified jurors are needed for Class A, B, or C felonies. Under IC 33-37-10-1, members of a jury are entitled to \$40 for each day the juror is in actual attendance. Consequently, the added costs for counties would be \$480 each day that a 12-member jury is in session.

*Background:* During CY 2003, trial courts in Indiana reported the following statistics to the Indiana Supreme Court concerning how felony cases were disposed in Indiana.

	<b><u>Jury Trials</u></b>	<b><u>Bench Trials</u></b>	<b><u>Bench Dispositions</u></b>	<b><u>Guilty Pleas</u></b>
Murder	89	11	3	76
Unclassified Felonies	140	97	128	1,979
A	144	35	22	1,440
B	214	100	43	3,565
C	183	171	95	6,046
D	349	825	504	30,101
<b>Total</b>	<b>1,119</b>	<b>1,239</b>	<b>795</b>	<b>43,207</b>

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts.

**Information Sources:** *2003 Indiana Judicial Report.*

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